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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 2nd April 2011

No. 3512—li/1(B)-68/2007-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 12th January 2011 in I. D. Case No. 9 of 2008 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of M/s. Cuttack Central Co-operative Bank Ltd., Nimchauri, Cuttack and its Workman Shri Gagan Bihari Mallick was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 9 OF 2008

Dated the 12th January 2011

Present :

Shri S. K. Dash,
Presiding Officer,
Labour Court, Bhubaneswar.

Between :

The Management of
M/s. Cuttack Central Co-operative
Bank Ltd., Nimchauri,
Cuttack.

... First-party—Management

And

Their Workman
Shri Gagan Bihari Mallick,
At/P.O. Nikirai,
Dist. Kendrapara.

... Second-party—Workman

Appearances :

Shri M. R. Sahoo, Law Officer	... For the First-party Management
Shri G. B. Mallick	... The Second-party Workman himself.

AWARD

The Government of Orissa in exercise of powers conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court vide Order No. 5962—li/1(B)-68/2007-LE., dated the 26th May 2008 of the Labour & Employment Department, Bhubaneswar for adjudication of the dispute.

2. The terms of reference is stated as follows :—

"Whether the action of the management of M/s. Cuttack Central Co-operative Bank Ltd., Cuttack in terminating the services of Shri Gagan Bihari Mallick, Cadre Secretary with effect from the 21st April 1990 is legal and/or justified ? If not, what relief the workman is entitled to ?"

3. The case of the workman in brief is that while working as Cadre Secretary at Kurtanga Service Co-operative Society under Kendrapara Branch on some fake allegation he was suspended from service vide order, dated the 27th August 1987 without any specific charge-sheet. After lapse of 8 months charge was framed vide separate charge-sheet containing five charges and explanation was called for from him. The workman submitted his explanation denying the charges levelled against him. Thereafter he was reinstated in service pending finalisation of proceeding. Before completion of the enquiry the alleged misappropriated money was deducted from the salary of the workman inspite of his objection. The person who was issued the charge-sheet was appointed as Enquiry Officer to conduct the enquiry against the workman. The Enquiry Officer without extending reasonable opportunity to the workman completed the enquiry in one day and recommended to take suitable action against the workman. The workman was called upon to show-cause within 15 days from the receipt of the order. The workman submitted his explanation challenging the findings of the Enquiry Officer and requested not to act upon it. The Member-Secretary who was the Enquiry Officer has assessed his own report with unfair manner and with *mala fide* intention passed the discharge order. After such discharge order the workman submitted appeal before the appellate authority but the same was rejected illegally. Thereafter the President of the Cuttack Central Co-operative Bank recommended to reinstate the workman in service, but due to adamant attitude of the management no fruitful result has been came out. So in this background the workman raised an industrial dispute before the labour authority and when the conciliation failed, the matter was referred to the Government and this reference has been received from the Government and this I. D. Case has been initiated wherein the workman has prayed for his reinstatement in service with all service benefits.

4. The management appeared and filed written statement partly admitting and partly denying the plea of the workman. According to the management, the workman was appointed as Cadre Secretary in Indupur Service Co-operative Society vide order, dated the 29th November 1976 and he joined in the service on 8-12-1976 and continued as such till 1985. In October, 1985 the workman was withdrawn from Indupur Service Co-operative Society in order to join at Cuttack Central Co-operative Bank, Kendrapara. The workman neither joined at Kendrapara Branch nor handed over the charge of Indupur Service Co-operative Society and remained absent unauthorisedly. After some days the workman joined at Kendrapara Branch and subsequently transferred and joined at Kurtanga Service Co-operative Society under Kendrapara Block. While the workman was working as Cadre Secretary at Indupur as well as Kurtanga Service Co-operative Society, he was remained under suspension due to misappropriation of funds. Five numbers of charges were framed against him on 19-4-1988 and was duly served on him. During the enquiry the workman has admitted his fault to the extent that he has misappropriated an amount of Rs. 12,530. While the workman was working as Cadre Secretary at Indupur Service Co-operative Society he has

misappropriated the fertiliser stock amounting to Rs. 5,967 and during enquiry the workman has admitted to have misappropriated the fertiliser stock of Rs. 1,526.65. The Enquiry Officer has submitted his report stating that the above charge of misappropriation of funds, manipulation of records and negligence of duty are proved. Hence the Enquiry Officer has suggested that suitable action may be taken against the workman by the management. In pursuance to the enquiry report the workman was discharged from his service vide order, dated the 21st April 1990. Though the workman has preferred an appeal before the appellate authority, the same was duly rejected. The Enquiry Officer subsequently acted as Member-Secretary of Cadre Committee. Therefore the decision taken by the Cadre Committee is to be carried out by the Member-Secretary of the Cadre Committee. The decision for discharging the workman from service was taken by the Cadre Committee. The Member-Secretary has only communicated the same. When the workman has admitted about the misappropriation of fund no proof is necessary. So in this background the management has prayed for answering the reference in negative.

5. In view of the above pleadings of the parties, the following issues are settled :

ISSUES

- (i) "Whether the action of the management of M/s. Cuttack Central Co-operative Bank Ltd., Cuttack in terminating the services of Shri Gagan Bihari Mallick, Cadre Secretary with effect from the 21st April 1990 is legal and/or justified ?
- (ii) If not, what relief the workman is entitled to" ?

6. In order to substantiate his plea, the workman has examined himself as W.W. 1 and proved documents marked as Exts. 1 to 4. The management has not adduced any evidence on his behalf and also not proved any document in support of his plea.

FINDINGS

7. *Issue Nos. (i) and (ii)*—Both the issues are taken up together for discussion for convenience.

In the instant case admittedly a domestic enquiry was held. Though specific issue has not been framed regarding fairness of domestic enquiry but both the parties have knowledge about it. Hence this issue can be decided along with other issues.

8. According to W. W. 1 the workman, while he was working as Cadre Secretary of Kurtanga Service Co-operative Society under Kendrapara Branch he was suspended from the service as per order, dated the 27th August 1987 and after lapse of 8 months charge-sheet was issued to him vide letter, dated the 19th April 1988. Considering his explanation pending finalisation of the proceeding, he was reinstated in service. After one and half year of his reinstatement in service, Shri Rupeswar Panda who issued charge-sheet was appointed as Enquiry Officer and conducted the enquiry without affording reasonable opportunity to the workman and completed the enquiry in one sitting and recommended the management to take suitable action against him. The said Enquiry Officer while discharging the duty of Member-Secretary of the Cadre Committee issued second show cause notice and by assessing his own report passed the discharge order. So it has been argued by the workman that the entire enquiry is vitiated and the domestic enquiry conducted against him was not fair and proper. M.W. 1 in his affidavit evidence though stated about the enquiry, enquiry report, dismissal order etc. but no specific document has been proved by him in support of such enquiry. The workman has proved certain documents which are receipts, challans, advice etc. In the cross-examination he has also admitted about framing of charges against him for misappropriation of funds and about participating in the enquiry proceeding and receipt of the enquiry report so also receipt of second show cause. But in order to prove the fairness of domestic enquiry, the management neither adduced any evidence nor proved any document including the document regarding the enquiry and also dismissal order. So for want of such documents it cannot be said

that the domestic enquiry conducted against the workman was fair and proper when specifically the workman has challenged about it. So on careful consideration of all the materials available in the case record I am inclined to hold that the domestic enquiry conducted against the workman was not fair and proper.

9. The management has also not proved the specific charges as levelled against the workman. There is also no materials regarding mandatory compliance of the Industrial Disputes Act for termination of service. So on careful consideration of all the materials available in the case record as discussed above, I came to the finding that the action of the management in terminating the services of the workman with effect from the 21st April 1990 is neither legal nor justified and he is entitled to be reinstated in service.

10. Regarding back wages, according to the settled principle of law the relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration. Further according to the authority reported in 2004 (Supp.) OLR 694 when the workman had not worked for the management during the period in question and he had not proved by cogent evidence that he was not gainfully employed elsewhere, payment of back wages is not justified. However on careful consideration of all the materials available in the case record as discussed above, I am of the opinion that instead of giving any back wages to the workman, a lump sum amount of Rs. 25,000 as compensation will meet the ends of justice. Hence both the issues are answered accordingly.

11. Hence Ordered :

That the action of the management of M/s. Cuttack Central Co-operative Bank Ltd., Cuttack in terminating the services of Shri Gagan Bihari Mallick, Cadre Secretary, with effect from the 21st April 1990 is illegal and unjustified. The workman Shri Mallick is entitled to be reinstated in service with a lump sum amount of Rs. 25,000 (Rupees twenty-five thousand) only as compensation in lieu of back wages. The management is directed to implement the Award within a period of one month from the date of its publication in the Official Gazette, failing which the amount shall carry interest at the rate of 9% (nine per cent) per annum till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH
12-01-2011
Presiding Officer
Labour Court, Bhubaneswar

S. K. DASH
12-01-2011
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor

P. K. PANDA
Under-Secretary to Government